debt, bearing interest, unless the garnishee was prevented from paying the debt by the garnishment. *Adams* v. *Cordis*, 8 Pick. (Mass.) 260; *Woodruff* v. *Bacon*, 35 Conn. 97. It has been held that dividends declared upon attached corporate stock follow the attachment lien. *Jacobus* v. *Monongahela Nat. Bank*, 35 Fed. 395; *Norton* v. *Norton*, 43 Ohio St. 509, 525. See *Moore* v. *Gennett*, 2 Tenn. Ch. 375, 379. Yet such dividends are declared only at the discretion of the directors of the corporation. See *Gibbons* v. *Mahon*, 136 U. S. 549, 558. In the principal case, the bank was under a statutory duty to pay over a certain portion of the net income to the depositors. CONN. GEN. STAT., §§ 3440, 3441. As the debtor had a vested right to the dividends, which were as certain as interest, the creditor, who succeeds to his rights, is entitled to the dividends as well as the deposits.

BILLS AND NOTES — DEFENSES — FAILURE OF CONSIDERATION — LIABILITY OF ACCEPTOR OF BILL OF EXCHANGE. — The defendant purchased a consignment of salmon, terms "f.o.b.," payment to be made on receipt of the goods or bill of lading. The consignor drew a draft on the defendant for the purchase price and sold the draft, with the bill of lading attached, to the plaintiff bank, which forwarded the draft to its New York correspondent for collection. Defendant accepted the draft. On the day of its maturity, defendant tendered payment, but the draft and bill of lading could not be found. Later in the day defendant was notified that the documents had been found and they were tendered to him the next day. *Held*, that defendant is liable on his acceptance. *First National Bank of Seattle* v. *Gidden*, 162 N. Y. Supp. 317 (App. Div.).

The court rests its decision upon the general proposition that an acceptor is liable absolutely on his acceptance, regardless of the surrender to him of the attached bill of lading. Now it is undoubtedly well settled that failure of a pledgee to surrender collateral upon tender of payment of the debt does not discharge the debt. *Cass* v. *Higenbotam*, 100 N. Y. 248, 3 N. E. 189. See JONES, PLEDGES, 3 ed., § 543 *ff*. Where the collateral has been converted by the pledgee, the pledgor has merely a counterclaim for the value of the security or a defense *pro tanto* to the action on the debt. *Cass* v. *Higenbotam*, *supra*; *Harrell* v. *Citizens Banking Co.*, 111 Ga. 848, 36 S. E. 460. See JOYCE, DEFENSES TO COMMERCIAL PAPER, § 613. But in a situation like that in the principal case it would seem that the bill of lading is more than mere collateral. Under the contract between the buyer and seller, it is the agreed exchange for the payment of the draft. It is clear that total failure of consideration is a good defense as between the original parties to a promissory note. *Perkins* v. *Brown*, 115 Mich. 41, 72 N. W. 1095; *Wyckoff* v. *Runyon*, 33 N. J. L. 107; *Divine* v. *Divine*, 58 Barb. (N. Y.) 264. Similarly, the drawer-payee of a bill of exchange cannot recover from the acceptor where the consideration for the acceptance has totally failed. *French* v. *Gordon*, 10 Kan. 370; *Hazeltine* v. *Dunbar*, 62 Wis. 162, 22 N. W. 165. See JOYCE, DEFENSES TO COMMERCIAL PAPER, § 202. And if an indorsee of the payee takes a bill or note with notice of the failure of consideration between the payee and the obligor, he cannot recover on the instrument. *Russ Lumber & Mill Co.* v. *Muscupiable Land & Water Co.*, 120 Cal. 521, 52 Pac. 995; *Carey* v. *Nissle*, 145 Mich. 383, 108 N. W. 733. The indorsee should be in no better position where, having assumed control of the document which he knows to be the consideration for the payment of the draft, he himself causes the failure of consideration. The indorsee must then be taken to assume the seller's duties as well as his rights. *Cf. Walker* v. *Squires*, Hill & D. (N. Y.) 23; *Guaranty Trust Co.* v. *Grotian*, 114 Fed. 433. It might be urged that in any event the transfer to the buyer of the beneficial ownership of the goods is a sufficient performance of the contract to preclude a defense of entire failure of consideration. See *Linnell* v. *Leon*, 206 Mass. 71, 73, 91 N. E. 895. But in fact what the buyer contracted for was a delivery to him of the goods or the bill of

lading, a prerequisite to the ready sale of the goods. On the particular facts of the principal case, however, the conclusion of the court must be supported, for there was not such a material delay as to excuse performance on the part of the defendant. *Cf. Smith* v. *Vertue*, 9 C. B. (N. S.) 214; *Linnell* v. *Leon*, *supra*.

BILLS AND NOTES — PURCHASER FOR VALUE WITHOUT NOTICE — RIGHTS OF PAYEE OF A STOLEN CERTIFIED CHECK WHO HAS GIVEN VALUE FOR IT. — A. drew a check on the defendant bank, payable to the plaintiff. The defendant certified the check. B. stole it and negotiated it to the plaintiff by posing as a messenger from A. The plaintiff sues for the amount of the check. *Held*, that he cannot recover. *Empire Trust Co.* v. *Manhattan Co.*, 162 N. Y. Supp. 629 (App. Div.).

At common law a payee could be a holder in due course. *Watson* v. *Russell*, 3 B. & S. 34; *Fairbanks* v. *Snow*, 145 Mass. 153, 13 N. E. 596. *Contra*, *Charlton Plow Co.* v. *Davidson*, 16 Neb. 374. But under the Negotiable Instruments Law such a result is not so easily reached. For the definition of a holder in due course apparently requires negotiation. See BRANNAN, NEG. INST. LAW, § 52. And "negotiation" of a bill "payable to order" is accomplished by "the indorsement of the holder completed by delivery." See BRANNAN, *supra*, § 30. As the maker does not pass the bill to the payee by indorsement, in capacity of a holder, this would seem to preclude the payee from becoming a holder in due course. But the general definition of negotiation is a transference "from one person to another in such manner as to constitute the transferee the holder thereof." See BRANNAN, *supra*, § 52. And a payee may be a holder. See BRANNAN, *supra*, § 190. Evidently considering the troublesome phraseology before mentioned as not being an intended modification of the general definition, many courts have held that a payee may be a holder in due course. *Boston Steel & Iron Co.* v. *Steuer*, 183 Mass. 140, 66 N. E. 646; *Brown* v. *Rowan*, 91 N. Y. Misc. 220, 154 N. Y. Supp. 1098. See *Lloyd's Bank* v. *Cooke*, [1907] 1 K. B. 794, 808. The court, however, in the principal case distinguishes these cases on the ground that in them the improper negotiation was by an agent, and not by a thief. This, it was argued, prevented the payee from being an "immediate" party and thus allowed him to be a holder in due course. It would seem, however, that such analysis is founded on feeling rather than construction. For granted the inference in the clause requiring "indorsement of the holder," then in neither case can the payee be a holder in due course; while if the general definition is to cover, it must apply equally well in either case.

BILLS AND NOTES — RIGHTS OF A DONEE AFTER MATURITY OF A NOTE VOIDABLE FOR ILLEGALITY. — The defendant executed and delivered his promissory note, bearing a secular date, on Sunday. The plaintiff who is suing on the note is a donee after maturity without actual notice. *Held*, that he may recover. *Gooch* v. *Gooch*, 160 N. W. 333 (Ia.).

A contract entered into on Sunday is voidable merely and not void under the Sunday law of Iowa. *Collins* v. *Collins*, 139 Ia. 703, 117 N. W. 1089. See CODE, § 5040. The defense of the maker of a note voidable for this or any other reason is usually considered to be personal or equitable. See 2 AMES, CASES ON BILLS AND NOTES, 812. It follows on well-known principles that neither a donee nor a purchaser after maturity should recover. *Bank of British North America* v. *McComb*, 21 Manitoba 58; *Wing* v. *Dunn*, 24 Me. 128; *Cowing* v. *Altman*, 71 N. Y. 435. Courts of Iowa have, however, held that the indorsee for value without notice of a matured note made on Sunday but dated on a secular day may recover. *Leightman* v. *Kadetska*, 58 Ia. 676, 12 N. W. 736. See *Johns* v. *Bailey*, 45 Ia. 241. The theory of these cases on which the court in the principal case relied is that "it is only against a person in equal fault that a defendant can be allowed to allege his own turpitude." *Leightman* v. *Ka-*